

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application)	Examiner: Shantese L. MCDONALD
)	
STEFAN BOEGL)	
)	Art Unit: 3617
Serial No.: 10/517,711)	
)	Deposit Account: 04-1403
Filed: DECEMBER 10, 2004)	
)	Customer No.: 22827
Confirmation No.: 4636)	

Title: METHOD AND DEVICE FOR THE PRODUCTION OF A PRECISE CONCRETE PREFABRICATED PART

**APPELLANT'S PETITION UNDER 37 CFR 1.181 TO
REQUEST ENTRY OF REPLY BRIEF**

MAIL STOP APPEAL BRIEF - PATENTS

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

By communication mailed on July 2, 2007, the Examiner refused to consider

Appellant's Reply Brief, stating only (emphasis added):

The reply brief filed on 3/15/07 has not been considered because it is not in compliance with 37 CFR 41/41(a). The **reply brief is not limited to new points of argument** or to **new grounds of rejection** raised in the examiner's answer. See MPEP 1208.03. Appellant has TWO MONTHS from the date of this communication to petition under 37 CFR 1.181 to request entry of the reply brief.

However, Appellant respectfully submits that this refusal is ultra vires as contrary to 37

CFR 44.41, the Administrative Procedure Act (5 U.S.C. §§ 500 et seq.) and MPEP

1208.

37 CFR 41.41(a) says nothing about limiting a reply brief to new points of argument or to new grounds of rejection raised in the examiner's answer. Moreover, MPEP 1208.03 does not exist. Furthermore, MPEP 1208 II states as follows:

If a reply brief is not in compliance with 37 CFR 41.41, the examiner must notify appellant that the reply brief has not been considered and the reason for non-compliance. The examiner may use form paragraph 12.182 on Form PTOL-90 to notify the appellant.

¶ 12.182 *Reply Brief Not Considered*

The reply brief filed on [1] has not been considered because it is not in compliance with 37 CFR 41.41(a) The reply brief [2].

Examiner Note:

1. In bracket 1, insert the date on which the reply brief was filed.

2. In bracket 2, insert the reasoning. For example, insert "was not filed within the non-extendable time period set in 37 CFR 41.41(a)(1)" or insert "included a new or non-admitted amendment or new or non-admitted affidavit or other evidence".

Thus, the reasoning behind the refusal stated in the communication does not comply with the permitted reasoning in 37 CFR 41.41(a) nor the examples given in MPEP 1208.

Moreover, MPEP 1208 II(B) states that in response to a reply brief the examiner may (emphasis added):

(B) Furnish a supplemental examiner's answer responding to any **new issue raised in the reply brief**.

Thus, raising a new issue in the reply brief must not be permitted grounds for refusing to enter a reply brief. For the MPEP explicitly provides that the Examiner may furnish a

supplemental examiner's answer responding to any **new issue raised in the reply brief**.

Additionally, if there is a contention that the reply brief raised a new point of argument, the communication fails to identify what that new point of argument might be. Appellant does not perceive any new issue. Accordingly, on July 20, 2007, appellant filed a Request for Reconsideration addressing this failure, but to date has received no response. Thus, presumably the Examiner is unable to articulate any new issue raised in the Reply Brief.

This failure to identify any new issue in the Reply Brief prevents the appellant from addressing the alleged non-compliance. Since the appellant is not informed about the specifics of the alleged new points of argument, the appellant is unable to address the grounds for refusing to enter the brief. The communication's failure to identify any new point of argument, effectively deprives the appellant any opportunity of seeking any meaningful review of the decision to refuse to enter the Reply Brief. Accordingly, the effect of this communication is to enable the Examiner to act as both adverse party and final arbiter of the Examiner's decision, which is arbitrary and capricious and prohibited by the constraints of due process of law and the Administrative Procedure Act.

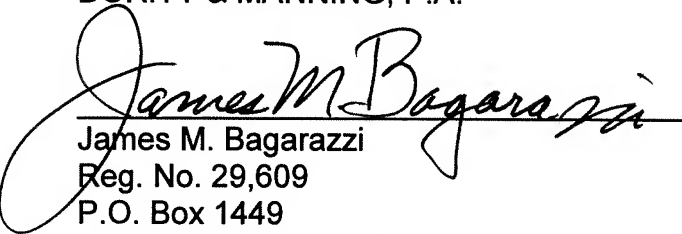
Accordingly, appellant respectfully requests entry of the Reply Brief as fully compliant with Patent Office regulations as promulgated under 37 CFR 41.41.

Applicant's encloses herewith its fee in the amount of \$400 for entry of this
Petition.

Respectfully submitted,

DORITY & MANNING, P.A.

DATED: 4 Sept 2007


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